

Claimant appeared by his attorney, John G. O'Connor of Kansas City, Kansas. The respondent and its insurance carrier appeared by their attorney, Gregory D. Worth of Lenexa, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, W. Frederick Zimmerman of Kansas City, Kansas. There were no other appearances.

RECORD

The record considered by the Appeals Board is enumerated in the Award of the Administrative Law Judge.

STIPULATIONS

The stipulations of the parties are listed in the Award of the Administrative Law Judge and are adopted by the Appeals Board for this review.

ISSUES

The Administrative Law Judge denied benefits and found claimant failed to provide timely written claim to the respondent. No other issues were considered. The claimant requests the Appeals Board review this denial of benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds, as follows: Claimant provided timely written claim for workers compensation benefits. Therefore, this proceeding should be remanded to the Administrative Law Judge for determination of the remaining issues.

The issue now before the Appeals Board is whether timely written claim was provided as required by K.S.A. 44-520a, which provides:

- "(a) No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation; . . ."

Claimant injured his back while working for the respondent on June 27, 1990. Shortly after the accident, claimant incurred several medical bills for treatment of his work-related injury which were promptly submitted to the respondent for payment through workers compensation. Claimant presented the medical bills to Ms. Carol Stewart, the person responsible for handling respondent's workers compensation claims. Both claimant and Ms. Stewart testified it was their understanding the bills were to be submitted to the workers compensation carrier for payment. Upon receipt of the bills, Ms. Stewart prepared and forwarded transmittal memoranda along with the bills to the insurer. Although the memoranda also contained other information, the memoranda referenced the claimant, the account, and date of accident. Also, each memoranda contained the notation "claim sent to."

The insurance carrier paid the bills and opened a claims file. Due to the passage of time, the claims file was closed and is now unavailable.

Based upon the above, the Appeals Board finds the requirement of written claim for benefits was satisfied when claimant presented the medical bills to the respondent for payment and respondent prepared the memoranda. The Appeals Board finds claimant intended to claim workers compensation benefits when he presented the bills for payment by the workers compensation insurance carrier, and, likewise, respondent believed the claim had been made when it noted same on its transmittal memoranda.

Whether an instrument constitutes a written claim or whether a claim for compensation has been timely filed are primarily questions of fact. A particular form of written claim is not required. In determining whether a document constitutes written claim, the trier of fact must examine the various writings and all the surrounding facts and circumstances, and after considering all of these things, place a reasonable interpretation upon them to determine what the parties intended. The claimant is not required to sign the document, and written claim may be presented in any manner and through any person or agency. Claim may also be served upon the employer's duly authorized agent. Ours v. Lackey, 213 Kan. 72, 515 P.2d 1071 (1973).

Because claimant did not watch the documents prepared, respondent contends the transmittal memoranda prepared by Ms. Stewart cannot be considered in determining whether written claim for compensation has been made. The Appeals Board disagrees. Claimant, as respondent's Vice President of Marketing, worked in the same office as Ms. Stewart and testified he was aware the transmittal memoranda were being prepared because it was company policy. This case is very similar to Ours v. Lackey, *supra*. In Ours, the Kansas Supreme Court found letters from respondent to its insurance carrier constituted written claim for compensation. The law does not require that claimant personally observe the preparation of a document.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Steven J. Howard entered in this proceeding on November 29, 1994, be set aside and this case be remanded to the Administrative Law Judge for determination of the remaining issues.

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John G. O'Connor, Kansas City, KS
Gregory D. Worth, Lenexa, KS
W. Frederick Zimmerman, Kansas City, KS
Steven J. Howard, Administrative Law Judge
George Gomez, Director